Bank is not liable. *McBride* v. *Illinois Nat. Bank*, 121 N. Y. Supp. 1041 (Sup. Ct., App. Div.).

In the absence of special agreement many authorities hold the depositary bank liable for any default of its correspondents on the ground of *del credere* agency. *Exchange National Bank of Pittsburgh* v. *Third National Bank of New York*, 112 U. S. 276. Other courts hold that the depositary bank agrees merely to exercise due care in choosing a correspondent bank as agent for the depositor. *Wilson* v. *Carlinville National Bank*, 187 Ill. 222. See 14 HARV. L. REV. 384. Under the latter rule the E Bank alone would be liable in the principal case and the special agreement is immaterial. Applying the former rule, as the court here did, the result is still correct; for if the agreement with the depositary bank makes the subsequent banks the depositor's agents the E Bank only is liable, while if its effect is limited to the B Bank the C Bank becomes the depositary and is alone liable. But the theoretically correct result is reached under trust principles rather than rules of agency. See 18 HARV. L. REV. 300. Thus the D Bank has a right of action against the E Bank which it holds in trust for the C Bank and the C Bank holds this equitable right in trust for the B Bank which in turn holds its right in trust for the A Bank. *Cf. Commercial Bank of Pennsylvania* v. *Armstrong*, 148 U. S. 50. Under this theory the agreement with the depositary bank becomes immaterial, since the only claim asserted is through, not against, the B Bank.

BILLS AND NOTES — DEFENSES — FRAUD AS DEFENSE AGAINST INDORSEE: BURDEN OF PROOF. — The indorsee of a promissory note sued the maker, who pleaded that the note was procured from him by fraud. *Held*, that the plea is not demurrable. *Hill* v. *Ward*, 91 N. E. 38 (Ind.).

In general a transferee of a note can recover unless he is shown not to be a *bonâ fide* purchaser. *Collins* v. *Gilbert*, 94 U. S. 753. But if the note was fraudulently procured, a presumption arises that it has merely been given to the indorsee for collection. See *Bailey* v. *Bidwell*, 13 M. & W. 73. This has led the courts to declare that proof of fraud shifts to the plaintiff the burden of proving that he took without notice and for value. *Hutchinson* v. *Boggs & Kirk*, 28 Pa. St. 294. It would follow that the defendant need only plead the fraud of the payee. *Hutchinson* v. *Boggs & Kirk*, *supra*. It is submitted, however, that since the defendant is relying upon the affirmative defense of fraud, he should bear the burden of proving that his defense is available against the present plaintiff. His plea, therefore, should contain an allegation that the plaintiff took with notice or without giving value. *Harvey* v. *Towers*, 6 Exch. 656. The presumption raised by proof of fraud would impose upon the plaintiff the burden of going forward with evidence to rebut that presumption, but when the evidence is all in, the defendant should fail unless the preponderance is in his favor.

BILLS OF PEACE — INSURANCE COMPANIES SEEKING TO ENJOIN SEPARATE ACTIONS. — Four independent actions were brought at law in the state court against different insurance companies upon similar policies covering the same loss. Two of the defendants removed the cases to the federal court and thereafter joined in a bill in equity against the plaintiff and the other two defendants to have the respective liabilities of the several companies determined in a single action. *Held*, that the bill will not lie. *Rochester German Ins. Co.* v. *Schmidt*, 175 Fed. 720 (C. C. A., Fourth Circ.).

For a discussion of the principles involved see 23 HARV. L. REV. 480.

CARRIERS — LOSS OR INJURY TO GOODS — GOODS SEIZED BY LEGAL PROCESS UNDER UNCONSTITUTIONAL STATUTE. — The plaintiff delivered liquors to the defendant for carriage. While in the defendant's possession, they were seized by the sheriff and destroyed under a warrant issued in conformity with an unconstitutional state statute. The defendant after seizure and before destruc-

tion notified the plaintiff. *Held*, that the defendant is not liable. *Southern Express Co.* v. *Sottile Bros.*, 67 S. E. 414 (Ga.).

In an action against a carrier for non-delivery of goods, it is no defense that he has delivered to a person whom he reasonably but erroneously believed to be the owner. *Powell* v. *Myers*, 26 Wend. (N. Y.) 591. But he is not liable if, upon proper demand, he has delivered to the true owner, for he was bound to do so. *Bates* v. *Stanton*, 1 Duer (N. Y.) 79. Nor is he liable if he has been compelled by valid legal process to surrender the goods. *Stiles* v. *Davis*, 1 Black (U. S.) 101. It should be immaterial that the attachment suit was against a third party. *Stiles* v. *Davis*, *supra*. *Contra*, *Edwards* v. *Transit Co.*, 104 Mass. 159. If the writ is manifestly irregular, so that it could be resisted without risk, the carrier should be liable if he yields to it. *Nickey* v. *Ry. Co.*, 35 Mo. App. 79. But if it appears valid on its face, it would be a great hardship to compel a carrier to take the risk of unlawfully resisting an officer, in order to avoid liability to the bailors. *Contra*, *Kiff* v. *Ry. Co.*, 117 Mass. 591. Since the defendant in the principal case could not be expected to judge of the constitutionality of the statute under which the writ was issued, it is submitted that he was properly excused. See *McAlister* v. *Railroad Co.*, 74 Mo. 351.

CORPORATIONS — STOCKHOLDERS: RIGHTS INCIDENT TO MEMBERSHIP — INSPECTION OF CORPORATE BOOKS AND RECORDS. — To a petition for a writ of mandamus for an inspection of the corporate books and records, the directors pleaded that the stockholder was wholly lacking in good faith. *Held*, that the plea is not demurrable. *Wight* v. *Heublein*, 75 Atl. 507 (Md.).

At common law a stockholder had a right to inspect the corporate books and records at all reasonable times, provided he made out a proper purpose. *State* v. *Kellogg*, 165 Ill. 192. This common-law right has never been superseded, and is frequently affirmed by legislative provisions. *Matter of Steinway*, 31 N. Y. App. Div. 70. In England a dispute between the stockholder and the corporation or other stockholders is usually a condition precedent to the exercise of the stockholder's right. *Rex* v. *Merchant Tailors' Co.*, 2 B. & Ad. 115. In this country greater freedom is allowed. The stockholder has apparently an almost absolute right which he can enforce by mandamus. *Weihenmayer* v. *Bitner*, 88 Md. 325. A personal inspection is not required: abstracts may be taken by an expert accountant. *Cincinnati Nolksblatt Co.* v. *Hoffmeister*, 62 Oh. St. 189. Yet the court in the exercise of its sound discretion will not grant the writ to aid speculative purposes or blackmail, or to gratify mere curiosity. See *Guthrie* v. *Harkness*, 199 U. S. 155, 156. The Supreme Court, however, puts on the corporation the burden of showing the stockholder's improper purpose. See *Guthrie* v. *Harkness*, *supra*. In this respect the original common-law doctrine seems preferable. Yet the principal case represents the tendency of the modern decisions, in regarding lack of good faith as an affirmative defense to be proved by the corporation. *State ex rel. Weinberg* v. *Pacific Brewing, etc. Co.*, 21 Wash. 451.

CORPORATIONS — ULTRA VIRES CONTRACTS: RIGHTS AND LIABILITIES OF PARTIES — RECOVERY IN QUANTUM MERUIT. — A was indebted to the B corporation to the extent of $10,000. At the request of B, the C corporation made a loan of $12,000 to A, the repayment of which was guaranteed by B. Then, in accordance with a prior agreement, A paid $10,000 of this sum to B. A defaulted. On C's suing B upon the latter's guaranty B pleaded *ultra vires*. *Held*, that C can recover $10,000 in *quantum meruit*. *Citizens' Central National Bank* v. *Appleton*, 30 Sup. Ct. 364. See NOTES, p. 627.

EMINENT DOMAIN — COMPENSATION — WHEN REPRODUCTIVE COST IS ADMISSIBLE IN EVIDENCE. — In proceedings to condemn land for a bridge abutment, evidence by a carpenter of the cost of reproduction of tenements on the land was excluded. *Held*, that it should have been admitted. *Matter of Blackwell's Island Bridge*, 91 N. E. 278 (N. Y.). See NOTES, p. 632.